SUPREME COURT, U. S.

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1973.

No. 73-693

COMMONWEALTH OF PENNSYLVANIA and BUCKS COUNTY INTERFAITH HOUSING CORPORATION, a Non-Profit Corporation, SUSAN CUMMINGS, RAMONA MORALES SERRANO, JEANNE COTTON, PEDRO ORTIZ, OLIVIA MOFFIT, Individually and on Behalf of Others Similarly Situated,

Petitioners,

v.

COUNTY OF BUCKS and BUCKS COUNTY PLANNING COMMISSION and BUCKS COUNTY HOUSING AUTHORITY and All of the Municipalities of Bucks County (Individually Named in Appendix F Herein),

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

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INDEX.

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Constitutional and Statutory Provisions Involved	3
Statement of the Case	4
Raising of the Federal Questions	5
Reasons for Granting the Writ	6
I. The Decision Below Conflicts With Decisions of This Court on Important Issues Affecting Federal Constitutional and Statutory Rights	6
II. The Decision Below Allows Local Zoning Ordinances and Practices to Prevent Implementation of Federal Housing Acts in Violation of the Constitutional and Statutory Rights of Petitioners	10
Conclusion	11
Appendix A	A1
Appendix B	A2
Appendix C	A7
Appendix D	A20
Appendix E	A21
Appendix F	A23
Appendix G	A26

TABLE OF CASES CITED.

	Page
Allied Stores v. Bowers, 358 U. S. 522 (1959)	6
Association of Data Processing Service Orgs., Inc. v. Camp, 397 U. S. 150 (1970)	7
Baker v. Carr, 369 U. S. 186 (1962)	8
Barrows v. Jackson, 346 U. S. 249 (1953)	8
Buchanan v. Warley, 245 U. S. 60 (1917)	8
Georgia v. Pennsylvania R. Co., 324 U. S. 439 (1945)	8
Hawaii v. Standard Oil Co., 405 U. S. 251 (1972)	8
Henry v. Mississippi, 379 U. S. 443 (1965)	6
Hunter v. Erikson, 393 U. S. 385 (1969)	9
In Re Girsh, 437 Pa. 237, 263 A. 2d 395 (1970)	9
In Re Kit-Mar Builders, 439 Pa. 466, 268 A. 2d 765 (1970)	9
James v. Valtierra, 402 U. S. 137 (1971)	8,9
Jones v. Mayer Co., 392 U. S. 409 (1968)	7,8
Law Students Research Council v. Wadmond, 401 U. S. 154 (1971)	7
National Land and Investment Co. v. Easttown Twp. Bd. of Adj., 419 Pa. 504, 215 A. 2d 597 (1965)	9
Norwalk Core v. Norwalk Redevelopment Agency, 395 F. 2d 920 (2nd Cir. 1968)	8
Reece v. Georgia, 350 U. S. 85 (1955)	6
Reitman v. Mulkey, 387 U. S. 369 (1967)	9
Shannon v. United States Dept. of Housing & Urban Dev., 436 F. 2d 809 (3rd Cir. 1970)	8
Shelley v. Kraemer, 334 U. S. 1 (1948)	8
Sullivan v. Little Hunting Park, 396 U. S. 229 (1969)	8
Trafficante v. Metropolitan Life Insurance Co., 409 U. S. 205, 93 S. Ct. 364 (1973)	7
United States v. SCRAP, — U. S. —, 93 S. Ct. 2405 (1973)	7
Village of Euclid v. Ambler Realty, 272 U. S. 365 (1926)	9

STATUTES CITED.

	Page
Civil Rights Act of 1866, 14 Stat. 27, 42 U. S. C. 1982	3
Civil Rights Act of 1870, 16 Stat. 144, 42 U. S. C. 1981	3
Civil Rights Act of 1871, 17 Stat. 13, 42 U. S. C. 1983	3
Civil Rights Act of 1964, 78 Stat. 252, 42 U. S. C. 2000(d) et seq., Title VI	3
Civil Rights Act of 1968, 82 Stat. 81, 42 U. S. C. 3601 et seq., Title VIII	3
28 U. S. C. § 1257(3)	2

CONSTITUTIONS CITED.

	Page
United States Constitution, Fourteenth Amendment	3, 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973.

No. .

COMMONWEALTH OF PENNSYLVANIA AND BUCKS COUNTY INTERFAITH HOUSING CORPORATION, A NON-PROFIT CORPORATION, SUSAN CUMMINGS, RAMONA MORALES SERRANO, JEANNE COTTON, PEDRO ORTIZ, OLIVIA MOFFIT, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED,

Petitioners,

v.

COUNTY OF BUCKS AND BUCKS COUNTY PLANNING COMMISSION AND BUCKS COUNTY HOUSING AUTHORITY AND ALL OF THE MUNICIPALITIES OF BUCKS COUNTY (INDIVIDUALLY NAMED IN APPENDIX F HEREIN),

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

The Petitioners, Commonwealth of Pennsylvania, Bucks County Interfaith Housing Corporation, a non-profit corporation, Susan Cummings, Ramona Morales Serrano, Jeanne Cotton, Pedro Ortiz, Olivia Moffit, individually and on behalf of others similarly situated, pray that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania entered August 1, 1973.

OPINIONS BELOW.

The judgment of the Supreme Court of Pennsylvania, as yet unreported, appears at Appendix A, *infra*, p. A1. The opinions of the Commonwealth Court of Pennsylvania, which are reported in 8 Commonwealth Court Rep. 295, 302 A. 2d 897 (1973), appear at Appendix B, *infra*, pp. A2-A6. The opinion of the Court of Common Pleas of Bucks County is reported in 22 Bucks County Law Reporter 179 (1972), and appears at Appendix C, *infra*, pp. A7-A19. The Commonwealth Court affirmed the judgment of the Court of Common Pleas of Bucks County, Pennsylvania. A timely petition for special allowance of appeal was denied by the Supreme Court of Pennsylvania on August 1, 1973.

JURISDICTION.

The judgment of the Supreme Court of Pennsylvania was entered on August 1, 1973. See Appendix A, p. A1, *infra*. This petition for certiorari was filed less than 90 days from the date aforesaid. This Court has jurisdiction under 28 U. S. C. § 1257(3).

QUESTIONS PRESENTED.

1. Whether non-resident members of minority groups, and other low-income and moderate-income persons, who have been prevented by exclusionary zoning ordinances and practices from becoming residents of the county and its municipalities, have standing to challenge the constitutionality of said ordinances and practices.

2. Whether the Commonwealth of Pennsylvania has standing to challenge the constitutionality of zoning ordinances and practices which prevent its citizens, and, in particular, citizens of the Commonwealth who are non-

residents of the county and municipalities whose actions are being challenged, from becoming residents of said county and municipalities.

3. Whether the constitutionality of zoning ordinances and practices which prevent the construction of federally-subsidized housing for members of minority groups, and other low-income and moderate-income persons, is a justiciable issue in a suit that challenges said restrictions as they apply to all land in the county and its municipalities and not to a particular site.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

This case involves the Equal Protection clause of the Fourteenth Amendment to the United States Constitution, which is set forth in Appendix D, p. A20, *infra,* and the Due Process Clause of the Fourteenth Amendment to the United States Constitution, which is set forth in Appendix D, p. A20, *infra.*

This case also involves the following statutes, adopted by the Congress of the United States, all of which are reprinted in pertinent part in Appendix E, pp. A21-A22, *infra.*

1. Civil Rights Act of 1870, 16 Stat. 144, 42 U. S. C. 1981.
2. Civil Rights Act of 1866, 14 Stat. 27, 42 U. S. C. 1982.
3. Civil Rights Act of 1871, 17 Stat. 13, 42 U. S. C. 1983.
4. Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U. S. C. 2000(d) et seq.
5. Title VIII of the Civil Rights Act of 1968, 82 Stat. 81, 42 U. S. C. 3601 et seq.

STATEMENT OF THE CASE.

This case originated upon the filing of a complaint by persons who desire to live in federally-subsidized housing in Bucks County, Pennsylvania, non-profit corporations which desire to build federally-subsidized housing for them in Bucks County, and the Commonwealth of Pennsylvania. This is a class action brought on behalf of the class of black persons and Spanish-speaking persons who qualify by reason of income for federally-subsidized housing in Bucks County, and who desire to live in such housing in Bucks County, but have been prevented from doing so. Another class involved in the suit is all Pennsylvania citizens who desire to live in federally-subsidized housing in Bucks County and who qualify by reason of low and moderate income for acceptance in such housing. The respondents are the County of Bucks, its Planning Commission and Housing Authority, and all of the municipalities of Bucks County, a list of said municipalities being set forth in Appendix F, pp. A23-A25, *infra*.

The complaint challenges the constitutionality of exclusionary zoning ordinances and practices which have prevented, and continue to prevent, the construction of federally-subsidized housing in Bucks County.

The respondents filed preliminary objections to the complaint. The preliminary objections were sustained by the Court of Common Pleas of Bucks County, Pennsylvania, on the ground that the petitioners, as non-residents and non-landowners of the municipalities in question, did not have standing to challenge the invalidity of the zoning ordinances and practices. Further, the Court held that only a challenge to the zoning restrictions upon a specific site would be a justiciable issue and a challenge brought against the zoning ordinances and practices, not as they relate to a specific site, but as they restrict the construction

of federally-subsidized housing in general, would not be a justiciable issue.

The Commonwealth Court of Pennsylvania affirmed the order of the Court of Common Pleas, and the Supreme Court of Pennsylvania denied the petition for allowance of appeal from the judgment of the Commonwealth Court.

RAISING OF THE FEDERAL QUESTIONS.

The federal questions here presented were specifically raised in the complaint, and the relevant paragraphs of the complaint are set forth in Appendix G, pp. A26-A29, *infra*. These federal claims were thus made at the earliest opportuntiy and were reserved at each stage of the proceedings below.

The complaint was dismissed on federal grounds on the basis that petitioners did not have standing to assert their federal claims and that consideration of these federal claims would not be a justiciable issue, as set forth in Appendix C, pp. A7-A19, *infra*.

REASONS FOR GRANTING THE WRIT.

I. The Decision Below Conflicts With Decisions of This Court on Important Issues Affecting Federal Constitutional and Statutory Rights.

Discriminatory zoning ordinances and practices violate the constitutional rights of members of minority groups and low-income and moderate-income persons. By granting standing only to residents and landowners, and denying standing to those persons who have been unable to become residents because they have been excluded, the court below has prevented the persons whose constitutional rights have been violated from contesting the invalidity of the deprivation of their constitutional rights. These persons have no other forum in which to assert their claims other than the courts since they are not able to exercise the right to vote for the members of the governing bodies of the county and municipalities.

The denial of standing to future residents is necessarily a question of federal law when the rights at issue are based on constitutional provisions and federal statutes. *Allied Stores v. Bowers,* 358 U. S. 522 (1959). By refusing to hear the claims of the persons who have been excluded, the court below has denied a forum to the Petitioners in which their constitutional and federally-created claims may be litigated, even though there is no fair and substantial basis for doing so and no legitimate state interest is thereby served. *Henry v. Mississippi,* 379 U. S. 443 (1965); *Reece v. Georgia,* 350 U. S. 85 (1955).

While there are no decisions of the Supreme Court specifically recognizing the standing of future residents to

challenge the unconstitutionality of their exclusion by discriminatory zoning ordinances and practices, such persons satisfy the test for standing established in the decisions of the Supreme Court and standing has been granted to persons in comparable situations.

Even though the zoning ordinances and practices directly apply to the development of land within the municipality, they also affect the constitutional rights of persons who desire to become residents of the municipality. Their stake in the outcome of this case is immediate and personal, the governmental actions involved have caused them injury in fact, they are within the zone of interests to be protected by the Due Process and Equal Protection Clauses of the Fourteenth Amendment, the Civil Rights Statutes, and the Federal Housing Acts, and the right which they allege has been violated—the right not to be subjected to racial discrimination in governmental actions —is one which the law protects. *Association of Data Processing Service Orgs., Inc. v. Camp,* 397 U. S. 150 (1970). Since it is the constitutional rights of future residents which are violated by exclusionary zoning, standing of future residents to challenge exclusionary zoning should be granted. This is in accord with recent decisions of this Court granting standing to other litigants to challenge governmental decisions violating their rights; *United States v. SCRAP,* — U. S. —, 93 S. Ct. 2405 (1973) and *Law Students Research Council v. Wadmond,* 401 U. S. 154 (1971).

There are also decisions concerning housing in general which grant standing to persons whose stake in the outcome of the litigation is comparable to that of the Petitioners in the instant case: *Trafficante v. Metropolitan Life Insurance Co.,* 409 U. S. 205, 93 S. Ct. 364 (1973); *Jones v.*

Mayer Co., 392 U. S. 409 (1968); *James v. Valtierra*, 402 U. S. 137 (1971); *Sullivan v. Little Hunting Park*, 396 U. S. 229 (1969); *Shelley v. Kraemer*, 334 U. S. 1 (1948); *Barrows v. Jackson*, 346 U. S. 249 (1953); *Shannon v. United States Dept. of Housing & Urban Dev.*, 436 F. 2d 809 (3rd Cir. 1970); and *Norwalk Core v. Norwalk Redevelopment Agency*, 395 F. 2d 920 (2nd Cir. 1968). These cases involved the same constitutional and federally-created rights relied upon by the Petitioners.

The state court also erred in denying standing to the Commonwealth of Pennsylvania to represent its citizens who desire to move from its heavily-congested counties to its developing counties. The Commonwealth, like the other Petitioners, is seeking injunctive relief and not monetary damages, and it instituted suit both under the parens patriae doctrine and as the representative of the classes referred to hereinabove. *Georgia v. Pennsylvania R. Co.*, 324 U. S. 439 (1945); *Hawaii v. Standard Oil Co.*, 405 U. S. 251, 256, n. 7, 270, n. 3 (1972).

The constitutionality of zoning ordinances and practices which prevent the construction of federally-subsidized housing for members of minority groups, and other low-income and moderate-income persons, should be recognized as a justiciable issue in a suit that challenges said restrictions as they apply to all land within the municipality and not just to a particular site. See, in general, *Baker v. Carr*, 369 U. S. 186 (1962) and *Buchanan v. Warley*, 245 U. S. 60 (1917). If persons who have been excluded may present a justiciable claim only by challenging the zoning restrictions upon a specific site and by filing an application for development of that site, then persons who have been excluded will be prevented from contesting the validity of their exclusion since these persons are neither residents nor landowners within the municipality.

The Supreme Court has considered cases involving restrictions upon housing in general, which did not concern the validity of restrictions as they applied to a specific site: *James v. Valtierra*, 402 U. S. 137 (1971); *Reitman v. Mulkey*, 387 U. S. 369 (1967); *Hunter v. Erikson*, 393 U. S. 385 (1969); and *Village of Euclid v. Ambler Realty*, 272 U. S. 365 (1926).

The Pennsylvania courts have recognized the unconstitutionality of exclusionary zoning, *National Land and Investment Co. v. Easttown Twp. Bd. of Adj.*, 419 Pa. 504, 215 A. 2d 597 (1965), *In Re Kit-Mar Builders*, 439 Pa. 466, 268 A. 2d 765 (1970) and *In Re Girsh*, 437 Pa. 237, 263 A. 2d 395 (1970), and have established in the aforementioned cases judicially discoverable and manageable standards that may be applied to suits brought by future residents challenging the invalidity of exclusionary zoning. Since challenging exclusionary zoning has been regarded as justiciable when the suit is instituted by landowners and developers, such suits should also be held to be justiciable when instituted by the persons whose constitutional rights are at stake—the persons who have been excluded.

While the opinion of the court below refers to justiciability, since justiciability has clearly been established in Pennsylvania in suits instituted by developers, the effect of denying justiciability in the only kind of case which future residents can bring, to wit, a case which does not concern a specific site but does concern the invalidity of the restrictions imposed upon the construction of housing, is the same as denying them standing to challenge the invalidity of their exclusion and to assert their constitutional rights.

II. The Decision Below Allows Local Zoning Ordinances and Practices to Prevent Implementation of Federal Housing Acts in Violation of the Constitutional and Statutory Rights of Petitioners.

During the years 1950 to 1970, the population of Bucks County increased from 144,620 to 415,056 persons, but the percentage of black persons living in Bucks County remained at two percent or less. During the same period, the black population of the Philadelphia metropolitan area increased from 483,927 persons in 1950 to 873,030 persons in 1970. The governmental officials involved are aware that the effect of their actions is to prevent members of minority groups from living within the County and its municipalities and to perpetuate segregated residential patterns within the Philadelphia metropolitan area by ensuring that members of minority groups are not able to live in Bucks County.

The exclusionary zoning ordinances and practices of the respondents are in conflict with the housing acts and policies of the United States, in regard to satisfaction of housing needs and the availability of subsidized housing to all citizens of the United States without racial discrimination.

The situation that exists in Bucks County is typical of the national pattern. Subsidized housing is not being built within suburban areas because of exclusionary zoning ordinances and practices. Members of minority groups are thereby prevented from moving to suburban areas and are denied the benefits of the subsidized housing programs.

This case is of national significance as is indicated by the Amicus Curiae Briefs filed in support of the Petitioners with the Commonwealth Court by American Civil Liberties Union, Bucks County Board of Realtors, Camden Regional Legal Services, Inc., League of Women Voters of Penn-

sylvania, National Association for Advancement of Colored People, Pennsylvania Builders Association and National Association of Home Builders of the United States, and Pennsylvania Jewish Community Relations Conference.

The effect of the decision of the court below is to allow a state court to decide a federal question of substance—the standing of non-resident members of minority groups to challenge the unconstitutionality of exclusionary zoning ordinances and practices—not previously determined by this Court.

CONCLUSION.

For the reasons set forth above, it is respectfully requested that this Petition for Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX A.

The Judgment of the Supreme Court of Pennsylvania.

August 1, 1973

Petition Denied

Per Curiam.

APPENDIX B.

The Opinions of the Commonwealth Court of Pennsylvania.

OPINION

PER CURIAM Filed April 3, 1973

President Judge Satterthwaite of the Court of Common Pleas of Bucks County ably and thoroughly discusses and disposes of the issues raised. We affirm the order of the lower court upon his opinion reported in 22 Bucks Co. L. Rep. 179 (1972).

CONCURRING OPINION

PRESIDENT JUDGE BOWMAN Filed April 3, 1973

A multi-class action in equity seeking unprecedented judicial interference in and arrogation over the planning and zoning affairs of every local government in Bucks County, the county itself and their related boards and commissions in performance of their powers and duties as conferred and imposed upon them by the legislative branch of the government of this Commonwealth impels judicial restraint in cases such as this where the justiciable issue, while postulated upon alleged violations of constitutional rights, is but a symbolic narrative of conjecture, supposition and abstraction as supportive of the alleged cause of action. I concur.

JAMES S. BOWMAN P. J.

DISSENTING OPINION.

JUDGE KRAMER April 3, 1973.

I respectfully, but vigorously dissent. The complaint in this case sets forth a class action alleging that all zoning ordinances in Bucks County are intentionally exclusionary in violation of the constitutional rights of the enumerated classes. It seeks redress for alleged de jure discrimination by way of the requested injunctions, both mandatory and prohibitory.

The majority of this Court has affirmed the order of the court below, which sustained the preliminary objections of the defendants, which were "in the nature of demurrers".

Preliminarily, in writing this dissent, I want to make it clear that I am in complete agreement with my brothers of the majority that courts should not become involved in matters purely political. Courts should never put themselves in positions where they invade the prerogatives of either of the other two branches of government. Courts should never take on the job of legislating, even where the legislative branch refuses to or fails to act. I am in agreement that the plaintiffs in this case, in part at least, had asked the lower court to legislate. However, the prayers of the complaint are in the alternative. The plaintiffs also asked the court to declare alleged intentional exclusionary zoning legislation invalid, and this the courts can do on the making of a proper record.

I request that my position on the various issues presented to us be recorded as follows:

1. *Standing*—The plaintiffs have asserted interests which are alleged to be protected by the 14th Amendment of the United States Constitution. They have alleged injury resulting from intentional action of the named legislative

bodies in Bucks County. In ruling upon the defendants' preliminary objections, we are duty bound to accept as true all of the properly pleaded allegations of the plaintiffs. In so accepting the plaintiffs' allegations, I would find that the plaintiffs have standing. *See Pennsylvania Environmental Council, Inc. v. Bartlett,* 315 F. Supp. 238 (M. D. Pa. 1970) *aff'd.,* 454 F. 2d 613 (3rd Cir. 1971); *Association of Data Processing Organizations, Inc. v. Camp,* 397 U. S. 150, 153, 25 L. Ed. 2d 184, 188 (1970); *Gautreaux v. Chicago Housing Authority,* 296 F. Supp. 907 (N. D. Ill., 1969), *aff'd.,* 436 F. 2d 306 (7th Cir. 1970), *cert. denied,* 402 U. S. 922, 28 L. Ed. 2d 661 (1971); *Penn Galvanizing Company v. Philadelphia,* 388 Pa. 370, 130 A. 2d 511 (1957).

2. *Exclusive Remedy*—There is no question that if the plaintiffs desire to contest one single zoning ordinance of one municipality that the exclusive remedy provided is the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P. L. 805, 53 P. S. § 10101 et seq. (MPC). Here, however, the plaintiffs are attacking all of the zoning ordinances of all 54 municipalities of Bucks County. The exclusive remedy doctrine is in reality discretionary, rather than mandatory. *See United States v. Abilene & Southern Railway Company,* 265 U. S. 274, 68 L. Ed. 1016 (1924); Davis, *Administrative Law Treatise,* Volume III, Section 20.04, p. 80 (1958); Anderson, *American Law of Zoning,* Volume III, Section 24.06, p. 670 (1968); *United States v. Zmuda,* 423 F. 2d 757 (3rd Cir. 1970), *cert. denied,* 398 U. S. 960, 26 L. Ed. 2d 545 (1970); *Duquesne Light Company v. Upper St. Clair Township,* 377 Pa. 323, 105 A. 2d 287 (1954); *Bell Telephone Company of Pennsylvania v. Driscoll,* 343 Pa. 109, 21 A. 2d 912 (1941). Equity courts may take jurisdiction where to exhaust administrative remedies would be futile; and equity courts will exercise jurisdiction to prevent multiplicity of suits. *See Kramer v. Slattery,* 260 Pa. 234, 103 A. 610 (1918); *Everett v. Harron,* 380 Pa. 123, 110

A. 2d 383 (1955); Ryan, *Pennsylvania Law of Zoning*, Section 9.1.8, p. 14 (1970). Finally, I find nothing in the MPC which specifically states that it is the exclusive remedy in all zoning matters. I conclude that a court of equity may take jurisdiction to determine the constitutional validity of all of the zoning ordinances of Bucks County, based upon a record properly made.

3. *Justiciable Issue*—Based upon the recent developments of the zoning law in this Commonwealth, as found in *Girsh Appeal*, 437 Pa. 237, 263 A. 2d 395 (1970); *Concord Township Appeal* [*Kit-Mar*], 439 Pa. 466, 268 A. 2d 765 (1970); and *National Land and Investment Company v. Easttown Township Board of Adjustment*, 419 Pa. 504, 215 A. 2d 597 (1965); the issue of whether exclusionary zoning ordinances were intentionally designed in violation of the plaintiffs' constitutional rights is a justiciable issue.

One often hears the argument in cases of this type that the very purpose of zoning ordinances is to protect the existing landowners and to permit the comprehensive planning of municipalities for the benefit of their citizens. Argument is made that the United States Supreme Court in *Village of Euclid v. Ambler Realty Company*, 272 U. S. 365, 71 L. Ed. 303 (1926), the most celebrated and foundation ruling in zoning matters, established the principles of planning and land protection. It is conceivable that we have made a complete circle in this rather new development in the law of property rights and police powers. Anyone who has even cursorily observed the recent cases coming before this Court knows that zoning ordinances have been used by municipalities for the intentional purpose of excluding certain uses. *See Beaver Gasoline Company v. Zoning Board of the Borough of Osborne*, 445 Pa. 571, 285 A. 2d 501 (1971); *Daikeler v. Zoning Board of Adjustment of Montgomery Township*, 1 Pa. Commonwealth Ct. 445,

275 A. 2d 696 (1971). This dissent, however, should not be interpreted to mean that the writer is passing judgment upon the intention of the many dedicated public servants, who legislate in zoning matters in Bucks County. Quite to the contrary, the law directs judges to presume that zoning ordinances are constitutional and that the burden of anyone attacking the constitutionality of a zoning ordinance is a heavy one indeed. *Gaudenzia, Inc. v. Zoning Board of Adjustment,* 4 Pa. Commonwealth Ct. 355, 287 A. 2d 698 (1972); *Nagorny v. Zoning Hearing Board,* 4 Pa. Commonwealth Ct. 133, 286 A. 2d 493 (1971); *St. Vladimir's Ukranian Orthodox Church v. Fun Bun, Inc.,* 3 Pa. Commonwealth Ct. 394, 283 A. 2d 308 (1971).

The point is that this case is still in its preliminary stages. Only a complaint and several preliminary objections have been filed. No answer or denial has yet been filed. The issues have not been struck. No opportunity to present the facts, subject to vigorous cross-examination, has been permitted. This Court is asked to rule on a demurrer, as a matter of law, whether or not the complaint in this case establishes a cause of action in an equity court. My reading of the law does not permit me to conclude, as a matter of law, that this complaint does not state a proper cause of action.

I would reverse the court below, overrule the preliminary objections in the nature of a demurrer and order an answer to be filed.

HARRY A. KRAMER
Harry A. Kramer, *Judge.*

APPENDIX C.

The Opinion of the Court of Common Pleas of Bucks County, Pennsylvania.

OPINION and ORDER OF THE TRIAL COURT

Plaintiffs seek sweeping and drastic equitable relief against all fifty-four local municipalities in Bucks County, as well as the County itself and its planning commission and housing authority. The gravamen of the action is that the zoning ordinances of the several municipalities are all said to be unconstitutional and invalid in that they are contended to exclude so-called low and moderate income housing throughout the County.

Plaintiffs are twelve individuals who claim to be representative of both resident and non-resident classes of low and middle income persons, as well as members of black and non-English-speaking minorities, all of whom desire to reside within Bucks County but who, although they have made no applications or otherwise attempted objectively to obtain permits, allegedly will be discriminated against by reason of their station or race and will not be permitted to enjoy housing anywhere therein under such existing zoning ordinances. Also joined as plaintiffs are the Commonwealth, through the Attorney General, and two corporations allegedly desirous of developing and building low and moderate income housing in the County, although presently owning or acquiring no particular land sought to be applied to such purpose.

The complaint, in extremely prolix and multifarious fashion, including many averments of an evidentiary rather than pleading nature, ultimately sets forth various conclusionary allegations which may be taken for present purposes to place before the Court contentions of violations

of constitutional due process, denial of equal protection of the laws and other related infirmities in the provisions and applications of local zoning ordinances throughout the County, insofar as they would arguably exclude the individual and corporate plaintiffs if they actually did attempt to furnish or acquire low or moderate cost housing anywhere within such geographic limits. The relief sought is of an on-going and continuing nature against the respective municipalities, enjoining them from such allegedly discriminatory exercise of the zoning function and requiring them either to legislate in the zoning field or to require special exceptions by local zoning hearing boards so that low and moderate income housing would be permitted; against the County planning commission, directing it to prepare such a housing plan and allocate the required number of units thereof among the respective municipalities of the County; against the County housing authority, requiring it to "cooperate with . . . [the other parties, and] . . . take all necessary steps to plan for, promote and provide for the construction" of such required housing; and against the County, directing it to "take all necessary steps, including the expenditure of County funds, to ensure the construction and development of the number of dwelling units required."

Many, if not all, of the respective defendants have filed preliminary objections asserting all imaginable types of procedural as well as substantive deficiencies alleged to inhere in the complaint. For present purposes, we need not be concerned with most of these contentions. Argued improprieties of pleading form and content, as well as possible questions of non-joinder or mis-joinder of parties, and of jurisdiction at law rather than in equity, and the many other interlocutory and inconclusive problems of a like character, may be disregarded. Even assuming that all of these questions should be resolved in plaintiffs' favor

or might be cured by the filing of an amended complaint, we believe that in any event plaintiffs neither have stated, nor can state, a presently cognizable and justiciable cause of action.

It is almost hornbook law that the statutory remedies and methods of procedure to raise questions of interpretation, application and validity of zoning ordinances are exclusive and must be strictly pursued. Ever since *Taylor v. Moore,* 303 Pa. 469 (1931), the rule has been followed that all questions involving zoning problems must be resolved in the zoning forum and not through other theoretically applicable forms of action, such as an action in equity, as here, to enjoin enforcement of allegedly invalid ordinance provisions: *Jacobs v. Fetzer,* 381 Pa. 262 (1955); *Knup v. Philadelphia,* 386 Pa. 350 (1956); *Bliss Excavating Company v. Luzerne County,* 418 Pa. 446 (1965). Notwithstanding the somewhat altered forms of statutory procedures provided in zoning cases by the Pennsylvania Municipalities Planning Code, the Act of July 31, 1968, P. L. — (No. 247), 53 P. S. 10101, et seq., that legislative recodification in no sense modified or overturned the exclusiveness-of-remedy doctrine: *Unger v. Hampton Township,* 437 Pa. 399 (1970).

It is true that an established exception to the exclusiveness rule has been recognized to allow for cases where the zoning remedy is not adequate or complete or is nonexistent. See, e.g., *Duquesne Light Company v. Upper St. Clair Township,* 377 Pa. 323 (1954); *Honey Brook Township v. Alenovitz,* 430 Pa. 614, 624 (1968). Plaintiffs apparently feel that their situation is within some such exception, recognizing that they have no pending applications for permits which have been denied at the local level, but urging that this very lack of occasion to invoke the administrative remedy demonstrates the propriety of their resort to equity. This position involves a non-sequitur; it necessarily assumes that they do have a presently cognizable cause of

action and that equity must therefore necessarily be appropriate since the same may not be litigated in the zoning forum. Such a premise is unfounded. Any cause of action which they *in the future* may be thought to have, if and when they ultimately do present a concrete and subsisting factual situation which would be ripe for judicial determination, is not *presently* available to them even assuming the merit of their position on the academic constitutional and other legal propositions for which they contend.

In reality, plaintiffs seek a premature and merely advisory opinion or adjudication of the theoretical or abstract invalidity of the various zoning ordinances, as they might relate to persons of the classes they purport to represent, if and when such persons should take actual steps to procure low or moderate cost housing in Bucks County. The rendering of advisory opinions on hypothetical facts is no part of the judicial function: *Silver v. Zoning Board of Adjustment,* 381 Pa. 41, 46 (1955) and cases cited. See also, *Sgarlat v. Kingston Borough Board of Adjustment,* 407 Pa. 324 (1962); *Raezer v. Raezer,* 428 Pa. 163 (1968); *Havertown Savings and Loan Association v. Commonwealth,* 3 Comm. Ct. 266 (1971).

A court will take jurisdiction only in a case in which a challenged statute, ordinance or rule of court has been actually applied to a litigant; it does not undertake to decide academically the unconstitutionality or other alleged invalidity of legislation until it is brought into operation so as to impinge upon the rights of some person or persons: *Knup v. Philadelphia,* supra, 386 Pa. at 353.

In *Home Life Insurance Company of America v. Board of Adjustment,* 393 Pa. 447 (1958), the Supreme Court affirmed the refusal of the lower court to declare a zoning ordinance unconstitutional as to a particular property, for the reason that the property owner had merely requested

the zoning authorities so to determine without submitting any specific plans of the contemplated use. The Court noted, 393 Pa. at 452-453:

> "The appellant would have us rule that any property owner may assail a zoning ordinance as being unconstitutional even though the owner had not been denied any particular use of his property which he had sought and, in fact, had no present plans with regards to its use. This would be to hold the ordinance unconstitutional *in vacuo* which, as often declared, a court will not do.
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> "As stated in *Knowles's Estate,* 295 Pa. 571, 585, 145 A. 797, 'In deciding constitutional attacks upon acts of assembly, the courts do not heed abstract propositions; they deal with actual conditions alone, which must not only affect the one complaining of the alleged unconstitutionality but also must affect him by reason of the particular defect that it is claimed makes the act unconstitutional.' The foregoing principle is equally applicable to attacks upon ordinances."

Compare *Kistler v. Swarthmore Borough,* 134 Pa. Superior Ct. 287 (1939); *Commonwealth v. Arnold,* 215 Pa. Superior Ct. 444, 449 (1969); *Doylestown Township Zoning Board of Adjustment v. Jaekel,* 11 Bucks Co. L. Rep. 163, 174-175 (1961).

In *Bliss Excavating Company v. Luzerne County,* supra, the Supreme Court vacated a preliminary injunction and dismissed an equity action by coal mine operators to enjoin enforcement of a newly enacted zoning ordinance which would regulate strip mining. No action to enforce the ordinance had been taken or was threatened. The opinion noted, 418 Pa. at 449-450:

> "The action was patently premature and amounted merely to an attempt to obtain an advisory opinion. Regardless of when the ordinance became effective, on December 16 or January 1, absolutely nothing had happened under the ordinance to create a case or controversy ripe for judicial intervention. The plaintiffs had not sought nor had they been denied the right to engage in any activities on their land. Nor had there been any indication or threat of enforcement. . . ."

Compare *Randall v. Clairton City,* 337 Pa. 276 (1940).

Roeder v. Hatfield Borough Council, 439 Pa. 241 (1970), is the most recent leading case on the subject and was decided with the Pennsylvania Municipalities Planning Code of 1968 in view. That decision held that proceedings by a protestant in the zoning forum under the MPC were proper for the purpose of attacking the substantive validity of an alleged "spot zoning" amendment to the basic zoning ordinance. It further held, nevertheless, that such proceedings were premature where no action had yet been taken under the amendment. The court observed, 439 Pa. at 248:

> "On many occasions, this Court has stated that questions as to the validity or constitutionality of an enactment will not be decided *in vacuo* but only after it has been actually applied to a litigant . . . This principle is applicable regardless whether the premature attack is by an action in equity or through the administrative framework, and it does not matter whether an individual is protesting a restriction on his use of his land or the permission given another to use the other's land in a particular way. In § 801 of the MPC the legislature has modified this rule somewhat as to a landowner who is restricted in the use of his land, but the Act in no way affects the rules governing

> an attack by an individual on an ordinance which grants permission to a land owner to use his land in a certain way."

See also *Linda Development Corp. v. Plymouth Township*, 3 Comm. Ct. 334, 344-345 (1971); *Levitt and Sons, Inc. v. Kane*, 4 Comm. Ct. 375, 387-388 (1972); *Penny v. Warrington Township Board of Supervisors*, 21 Bucks Co. L. Rep. 322, 329, 53 D. & C. 2d 329, 332 (1971).

For the foregoing reasons, we believe it to be improper at this time to rule upon plaintiffs' negative contentions that the zoning ordinances in question should be adjudicated invalid as anticipatorily applied to the situation which plaintiffs would propose. We also believe it to be equally improper to undertake to determine whether plaintiffs would be entitled to the affirmative portions of their prayers for relief, i.e., those which really sound as though this were an action in mandamus, whereby plaintiffs would have the Court direct the Bucks County Planning Commission and the several municipal legislative bodies to prepare on a County-wide basis, and to carry into effect at each local level, respectively, an allocated plan for low and moderate income housing and the implementation thereof through appropriate amendments to the individual zoning ordinances in question. The Court's involvement in this type of function would clearly be an intrusion into the legislative field and hence be a violation of the whole concept of separation of legislative and judicial branches of the government. The Court would thereby be injected into a political, and hence non-justiciable, controversy, a position in which the judiciary should never permit itself to be placed.

The General Assembly, by various statutes, all now superseded and codified (so far as present purposes are concerned) into Sections 302, 501, 601 and 702 of the

Pennsylvania Municipalities Planning Code, supra, 53 P. S. 10302, 10501, 10601 and 10702, has conferred upon the "governing body" of any municipality the power and authority to adopt and, presently more germane, to amend, as respective subjects of legislative action for the particular municipality, a comprehensive plan, a sub-division and land development ordinance, a zoning ordinance, and a planned residential development ordinance. The "governing body" would, of course, be the township commissioners or supervisors, or borough councilmen: Section 107(10) of the Pennsylvania Municipalities Planning Code, 53 P. S. 10107(10). At no place in this legislative scheme does the statute authorize, invite or in any way provide for participation in the enactment or amendment process by the judiciary.

The Bucks County Planning Commission is in no more authoritarian position than the Court with respect to its statutory powers over local municipal action in the planning and zoning field. Although this commission was created some years ago and formerly had functioned under Sections 2001-2011 of the County Code, 16 P. S. 2001-2011, and predecessor legislation, it likewise presently derives its power and authority from the Pennsylvania Municipalities Planning Code, supra. Bucks County as a county of the third class is a "municipality" as defined in Section 107(13), and the provisions of Article II of the MPC relating to planning agencies, accordingly, are applicable to the County planning commission.

But no provisions of the MPC confer other than a recommendatory function upon the County planning commission with respect to local municipal action on comprehensive plans, sub-division and land development regulations, zoning ordinances and planned residential development ordinances. See Sections 209, 304, 306, 502, 607 and 704,

53 P. S. 10209, 10304, 10306, 10502, 10607 and 10704. Indeed, even regulations within these respective categories as actually adopted by the County Commissioners as *County* legislation have no effect and are totally inapplicable except as to those municipalities within the County which do not have their own local ordinances: Section 502, 602 and 704, 53 P. S. 10502, 10602 and 10704. In the present case, only three or four of the fifty-four municipal defendants did not have a presently effective zoning ordinance at the time of argument herein.

In short, neither the County planning commission nor the County Commissioners, as the planning agency or the "governing body" at the County level, respectively, have any statutory power to direct local municipalities to take particular legislative action in the planning and zoning areas of the law. Accordingly, no edict from the Court in the nature of or analogous to a judgment in mandamus requiring the county agencies to promulgate and allocate such local action could properly even be entered, let alone be enforced, through the existing statutory channels provided by the MPC. Here again, the only conceivable way in which plaintiffs' prayers for affirmative relief could possibly be carried out would be for the Court to purport to compel the local municipal legislative bodies to amend, or repeal and reenact, their respective comprehensive plans, sub-division and land development regulations, zoning ordinances and planned residential development provisions in mandatory compliance with County planning commission recommendations. This the Court has no power to do, even were it so inclined. The judiciary is not a super-legislative body.

The criteria for determining in given cases what would constitute purely political and hence non-justiciable controversies in the present sense were developed and considered

at length in Justice Brennan's opinion for the majority of the Supreme Court in the famous legislative reapportionment case of *Baker v. Carr,* 369 U. S. 186, 7 L. ed. 2d 663 (1962). Relevant quotations from that opinion follow: [Emphasis supplied.]

> "We have said that 'In determining whether a question falls within [the political question] category, the appropriateness under our system of government of atttributing finality to the action of the political departments *and also the lack of satisfactory criteria for a judicial determination are dominant considerations.*' Coleman v. Miller, 307 U. S. 433, 454, 455, 83 L. ed. 1385, 1396, 1397, 59 S. Ct. 972, 122 A. L. R. 695. *The non-justiciability of a political question is primarily a function of the separation of powers . . .*" [369 U. S. at 210, 7 L. ed. 2d at 682]
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> • • •
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> "It is apparent that several formulations which vary slightly according to the settings in which the questions arise may describe a political question, although each has one or more elements which identify it as essentially a function of the separation of powers. Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; *or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial determination of a kind clearly for non-judicial discretion;* or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence of a political decision already made; or the potentiality of embarrassment

from multifarious pronouncements by various departments on one question. . . .'' [369 U. S. at 217, 7 L. ed. 2d at 685-686]

In *Baker v. Carr,* of course, the Supreme Court found that none of these various elements were significantly present. The Court therefore undertook to require judicial disposition of legislative reapportionment problems, rejecting the contention that they constituted non-justiciable political questions. The Court did find satisfactory standards for determining the application of the Equal Protection Clause to achieve the quite obvious desideratum of proportionately equal representative government through the more or less fixed arithmetical standards of calculable ratios of legislators to constituents as related to particular geographic areas, and that no basic determinations of a legislative character were involved which the judiciary could not itself resolve and apply.

In the instant case, however, significantly different considerations are involved. It is certainly true that plaintiffs' premise of exclusionary zoning, if and when actually established as such, would be judicially rectified. See, e.g., *National Land and Investment Company v. Easttown Township Board of Adjustment,* 419 Pa. 504 (1965) (excessive area requirements); *Girsh Appeal,* 437 Pa. 237 (1970) (exclusion of apartments, municipality-wide); *Concord Township Appeal,* 439 Pa. 466 (1970) (excessive area requirements); compare, *Beaver Gasoline Company v. Osborne Borough,* 445 Pa. 571 (1971) (burden of proof of validity of total exclusion of service stations). On the other hand, we do not understand these or any other precedents to confer any omniscience upon the judiciary in the planning and zoning fields, or to require elimination of expertly advised and informed local legislative discretion in prescribing the extent, location, terms and conditions, and the

many other relevant factors which go into a practical and workable application of the planning and zoning function as related to any and all particular categories of uses or occupancies, including housing. As pointed out in *National Land and Investment Company*, supra, 419 Pa. at 521:

> "In the span of years since 1926 when zoning received its judicial blessing, the art and science of land planning has grown increasingly complex and sophisticated. The days are fast disappearing when the judiciary can look at a zoning ordinance and, with nearly as much confidence as a professional expert, decide upon the merits of a zoning plan and its contribution to the health, safety and morals or general welfare of the community. This Court has become increasingly aware that it is neither a super board of adjustment nor a planning commission of last resort . . . Instead, the Court acts as a judicial overseer, drawing the limits beyond which the local regulations may not go, but loathing to interfere, within those limits, with the discretion of local governing bodies . . . The zoning power is one of the tools of government which, in order to be effective, must not be subjected to judicial interference unless clearly necessary."

Accordingly, it would seem apparent that the within action, unlike that of *Baker v. Carr*, inherently and necessarily would involve the attempted answers to questions of a political and nonjusticiable nature, which answers would be beyond the competence of the Court to formulate, direct and administer. In order to meet and resolve the problems posed by plaintiffs in their presently hypothetical, far-ranging and totally unparticularized context, the Court itself, directly, or indirectly through the requested mandates to and oversight of the County planning commission

and the governing bodies of the fifty-four separate municipalities, would be required to assume the awesome task of becoming a super-planning agency, with no expertise in the field; and as such the Court would be required to make immediate and basic "initial policy determinations of a kind clearly for nonjudicial discretion", and to carry out this tremendous responsibility with an entire "lack of judicially discoverable and manageable standards for resolving it," in the language of the *Baker v. Carr* opinion, supra. This responsibility we do not believe we are required to assume, and we therefore decline to do so.

ORDER

And Now, this 17th day of April, 1972, for the reasons stated in the foregoing opinion, the preliminary objections of the respective defendants in the nature of demurrers to plaintiffs' complaint are hereby sustained, said complaint is hereby dismissed, and judgment is hereby entered against the plaintiffs and in favor of each and all of the defendants.

Judges Walsh and Rufe did not participate in the consideration or determination of this case.

By the Court,

Edwin H. Satterthwaite,
P. J.

APPENDIX D.

The Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX E.

Statutory Provisions.

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1. Civil Rights Act of 1870, 16 Stat. 144, 42 U. S. C. 1981.

> All persons within the jurisdiction of the United States shall have the same rights in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

2. Civil Rights Act of 1866, 14 Stat. 27, 42 U. S. C. 1982.

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

3. Civil Rights Act of 1871, 17 Stat. 13, 42 U. S. C. 1983.

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

4. Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U. S. C. 2000(d), et seq.

No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

5. Title VIII of the Civil Rights Act of 1968, 82 Stat. 81, 42 U. S. C. 3601, et seq.

It is the policy of the United States to provide, within Constitutional limitations, for fair housing throughout the United States.

APPENDIX F.
List of Municipalities of Bucks County.

BENSALEM TOWNSHIP—Municipal Building, 3800 Hulmeville Road, Cornwells Heights, Pa. 19020

BRIDGETON TOWNSHIP—Upper Black Eddy, Pa. 18972

BRISTOL BOROUGH—Municipal Building, Bristol, Pa. 19007

BRISTOL TOWNSHIP—Township of the First Class—2501 Oxford Valley Road, Levittown, Pa. 19053

BUCKINGHAM TOWNSHIP—Meeting Room, Old York Road, Buckingham, Pa. 18912

CHALFONT BOROUGH—Borough Office, 101 Main Street, Chalfont, Pa. 18914

DOYLESTOWN BOROUGH—Borough Hall, 18 North Main Street, Doylestown, Pa. 18901

DOYLESTOWN TOWNSHIP—Township Building, 425 Wells Road, Doylestown, Pa. 18901

DUBLIN BOROUGH—Borough Hall, Dublin, Pa. 18917

DURHAM TOWNSHIP—Durham, Pa. 18939

EAST ROCKHILL TOWNSHIP—Office of Secretary, Ridge Road, East Rockhill, Pa.

FALLS TOWNSHIP—Township Building, 285 Yardley Avenue, Fallsington, Pa. 19054

HAYCOCK TOWNSHIP—Township Building, Harrisburg School Road, Haycock, Pa.

HILLTOWN TOWNSHIP—Township Building, Box 15, Silverdale, Pa. 18962

HULMEVILLE BOROUGH—Council Chamber, 114 Trenton Avenue, Hulmeville, Pa.

IVYLAND BORO—DuBois and Gough Avenues, Ivyland, Pa.

LANGHORNE BOROUGH—Council Chamber, Maple Avenue, Langhorne, Pa. 19047

LANGHORNE MANOR BOROUGH—Borough Building, Prospect & Hulmeville Avenues, Langhorne Manor, Pa. 19047

Lower Makefield Township—Edgewood Road, Yardley, Pa. 19067

Lower Southampton Township—Township Building, 1500 Desire Avenue, Feasterville, Pa. 19047

Middletown Township—700 New Rodgers Road, Levittown, Pa. 19056

Milford Township—R. D. 2, Quakertown, Pa. 18951

Morrisville Borough—Borough Hall, 35 Union Street, Morrisville, Pa. 19067

New Britain Borough—170 West Butler Avenue, New Britain, Pa.

New Britain Township—Township Building, 615 Limekiln Pike, Chalfont, Pa. 18914

New Hope Borough—Borough Building, Mechanic & Main Streets, New Hope, Pa. 18938

Newtown Borough—Council Chambers, North State Street, Newtown, Pa. 18940

Newtown Township—Township Building, Rt. 413, R. D. Newtown, Pa. 18940

Nockamixon Township—Center Hill, Ferndale, Pa. 18921

Northampton Township—Township Building, 2nd Street Pike, Richboro, Pa. 18954

Penndel Borough—Borough Building, 300 Bellevue Avenue, Penndel, Pa. 19047

Perkasie Borough—Borough Building, 607 Chestnut Street, Perkasie, Pa. 18944

Plumstead Township—Township Building, Stump Road, Plumsteadville, Pa. 18949

Quakertown Borough—Borough Building, 330 West Broad Street, Quakertown, Pa. 18951

Richland Township—Township Building, 743 East Cherry Road, Quakertown, Pa. 18951

RICHLANDTOWN BOROUGH—Borough Building, South Main Street, Richlandtown, Pa. 18955

RIEGELSVILLE BOROUGH—Riegelsville, Pa. 18977

SELLERSVILLE BOROUGH—Borough Building, 140 East Church Street, Sellersville, Pa. 18960

SILVERDALE BOROUGH—Rts. 152 & 313, Silverdale, Pa. 18962

SOLEBURY TOWNSHIP, Township Building, Sugan Road, Solebury, Pa. 18963

SPRINGFIELD TOWNSHIP—Pleasant Valley, Pa. 18948

TELFORD BOROUGH—Borough Building, 122 Penn Avenue, Telford, Pa. 18969

TINICUM TOWNSHIP—Township Building, R. D., Pipersville, Pa. 18947

TRUMBAUERSVILLE BOROUGH—Trumbauersville, Pa. 18970

TULLYTOWN BOROUGH—Bordentown Road & Main Street, Tullytown, Pa.

UPPER MAKEFIELD TOWNSHIP—Township Building, Eagle Road, R. D. 2, Newtown, Pa. 18940

UPPER SOUTHAMPTON TOWNSHIP—Township Building, 939 Street Road, Southampton, Pa. 18966

WARMINSTER TOWNSHIP—Municipal Building, Henry and Gibson Avenues, Warminster, Pa. 18974

WARRINGTON TOWNSHIP—3400 Pickerton Road, Warrington, Pa. 18967

WARWICK TOWNSHIP—Administrative Building, 2045 Guinea Lane, Jamison, Pa. 18929

WEST ROCKHILL TOWNSHIP—Ridge Valley Road, Sellersville, Pa. 18960

WRIGHTSTOWN TOWNSHIP—Penns Park Road, Wrightstown, Pa.

YARDLEY BOROUGH—Municipal Building, 56 South Main Street, Yardley, Pa. 19067

APPENDIX G.

Paragraphs of Complaint.

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80. Despite substantial construction of new dwelling units in Bucks County from 1950 to the present time, much of it aided by FHA mortgage insurance and the expenditure of other federal funds, black and Spanish-speaking persons were excluded from purchasing or renting these new dwelling units and effectively excluded from moving to the County, and the small number of black and Spanish-speaking persons living in the County were confined to segregated enclaves. While federal aid was accepted for housing for relatively-wealthy white persons, no low-income housing was constructed during this period, so that low-income persons were also excluded from the County. During the late 1960's and 1970's, moderate-income persons were also excluded from the County as a result of the Defendants' discriminatory zoning practices and procedures, described in the next section, which perpetuate the discriminatory practices and procedures set forth hereinafter.

84. Since 1950, black, Spanish-speaking and all low-income persons, have been discriminatorily excluded from the County by the Defendants' failure and refusal to use the federal programs available for the construction of low-income housing.

85. While continuing to accept federal funds for the benefit of the white residents of the County, the Defendants have effectively prohibited the construction of moderate-income housing during the late 1960's and 1970's by discriminatory zoning practices and procedures, described hereinafter, which perpetuate the exclusion of black, Spanish-speaking, and moderate-income persons from the County.

87. The Defendants' policies and practices of unduly restricting low-income and moderate-income housing authorize, sanction, and encourage the exclusion of black, Spanish-speaking, low-income and moderate-income persons from the County and the confining of the small number of black and Spanish-speaking persons who do reside in the County to recognized, segregated geographic enclaves therein.

104. The lack of safe, sanitary, and decent low-income and moderate-income housing is due solely to the Defendants' failure to act to solve the problem of the critical shortage of such housing, to the perpetuation of the aforementioned discriminatory practices and procedures and to the Municipalities' misuse of the powers to plan and zone, the effect of which has been to preclude the Plaintiffs from finding safe, sanitary, and decent housing in the County.

105. Defendants must be deemed to have known, and did know, the effects of their practices and procedures in excluding black, Spanish-speaking and low-income and moderate-income persons from the County and in confining these persons to inadequate housing in segregated enclaves.

106. The practices and procedures of the Defendants have had the purpose and effect of preventing the development of housing in the County for black, Spanish-speaking, and low-income and moderate-income persons, and such practices and procedures will continue to have such purpose and effect in the future of preventing the development of such housing and of confining black, Spanish-speaking, and low-income and moderate-income persons presently living in the County to inferior, segregated, and inadequate housing unless Plaintiffs are granted the relief requested herein.

107. Defendants' housing and land-use laws, policies and practices, are arbitrary and unreasonable, bearing no

substantial relation to the health, safety, morals or general welfare of the citizens of the Commonwealth, and are contrary to the enabling legislation and to the public interest, in violation of Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

112. By perpetuating discriminatory practices and procedures, and by following discriminatory zoning practices and procedures which bear no relation to any legitimate and sufficient public purpose, the Defendants have discriminated and are discriminating against Plaintiffs on the basis of their race and place of national origin in violation of the Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

114. The purpose and effect of the zoning practices and procedures of the Municipalities has been and is to exclude black, Spanish-speaking, and low-income and moderate-income persons from the County, depriving such persons of the right to travel to and to live within the County and also the right of employment, education, and all the other benefits of the quality of life enjoyed by relatively-wealthy persons within the County.

117. The Defendants have unlawfully discriminated against the Plaintiffs on the basis of their economic status, their race, and place of national origin, in failing to provide safe, sanitary, and decent housing and in their activities which preclude the construction of said housing, in violation of the various Civil Rights Acts codified in 42 U. S. C. 1981, 1982, 1983, Title VI of the Civil Rights Act of 1964, P. L. 88-352, 42 U. S. C. Section 2000(d), *et seq.*, and Title VIII of the Civil Rights Act of 1968, P. L. 90-284, 42 U. S. C. 3601, *et seq.*

118. Plaintiffs are also being denied their congressionally established right to decent housing in that the Congress

has repeatedly affirmed the national policy of remedying unsafe and unsanitary housing conditions for families with low-income, has established a national goal of a decent home and a suitable living environment for every American family, and has declared that in the administration of the federal housing programs the highest priority in emphasis should be given to meeting the housing needs of those families whose incomes are so low that they have been denied decent and adequate housing heretofore: Section 1 of the Housing Act of 1937, P. L. 75-412, 42 U. S. C. Section 1401: Section 2 of the Housing Act of 1949, P. L. 86-372, 42 U. S. C. Section 1441; and Section 2 of the Housing and Urban Development Act of 1968, P. L. 90-448, 12 U. S. C. 1701(t).